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IN THE SUPREME COURT OF FLORIDA

DEPARTMENT OF BUSINESS
REGULATION, DIVISION OF FLORIDA
LAND SALES AND CONDOMINIUMS,

Petitioner,

vs. CASE NO. 65,814

HERMAN E. SIEGEL,

Respondent.

TOWERS OF QUAYSIDE HOMEOWNERS'
ASSOCIATION, INC.,

Petitioner,

vs. CASE NO. 65,834

HERMAN E. SIEGEL,

Respondent.

_____/

APPEAL FROM THE DISTRICT COURT
OF APPEAL, THIRD DISTRICT OF FLORIDA

AMICUS BRIEF OF BUILDERS ASSOCIATION OF SOUTH FLORIDA and THE GARDENS OF KENDALL PROPERTY OWNERS ASSOCIATION, INC.

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STATEMENT OF THE CASE AND OF THE FACTS

The Court's discretionary jurisdiction has been invoked by Petitioners, DEPARTMENT OF BUSINESS REGULATION, DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS AND MOBILE HOMES (hereinafter the "Division") and the TOWERS OF QUAYSIDE HOMEOWNERS' ASSOCIATION, INC. (hereinafter the "Homeowners' Association"), to review the District Court of Appeal, Third District of Florida's decision in Siegel v. Division of Florida Land Sales and Condominiums, etc., 453 So.2d 414 (Fla. 3d DCA 1984), holding that Homeowners' Association is a condominium "association" within the meaning of Section 718.103(2), Florida Statutes (1983). Jurisdiction is predicated on the existence of a conflict between the Third District's decision and the Court's decision in Raines v. Palm Beach Leisureville Community Association, Inc., 413 So.2d 30 (Fla. 1982), approving the Fourth District's decision in the same case styled and reported as Palm Beach Leisureville Community Association, Inc. v. Raines, 398 So.2d 471 (Fla. 4th DCA 1981).

The Homeowners' Association was created pursuant to certain Articles of Incorporation 1/ and a Declaration of Covenants, Restrictions, and Easements. (App. B). Pursuant to these docu-

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1/ Appendix G to Petitioner's, The Towers of Quayside Homeowners' Association, Inc., Brief on Merits, at 2. To save expense and duplication, and to reduce the volume of documents in the Court's file, Amici Curiae hereby adopt the Homeowners' Association's Appendix for purposes of the instant brief. Further citations to such Appendix shall appear as "App. ____".

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ments, it is given the power and duty to operate certain community-wide facilities, referred to as "common properties," in the planned residential development known as The Towers of Quayside. The common properties include a health spa, a marina, a restaurant, and tennis courts, all of which will be operated and maintained for the use and benefit of all current and prospective homeowners in The Towers of Quayside community. To ensure community-wide safety, health and welfare, the Homeowners' Association is empowered and is given the duty to provide security and to correct unsightly or dangerous conditions existing in the community should the independent condominium associations fail to remedy same.

The Towers of Quayside community consists of two undeveloped sites, the common properties, and four condominium high-rise residential towers, three of which towers are and were condominiums since they were constructed, and one of which through February, 1983 consisted of rental apartments -- in February, 1983 this fourth tower was converted into a condominium tower. Each tower is operated by a separate condominium association created through separate Declarations of Condominium and Articles of Incorporation. Each such condominium association is granted the power and duty to operate the "common elements" of its tower, which common elements include terraces, balconies and air conditioning units in the tower, and parking lots and recreational facilities located in or about the tower. Respondent, HERMAN E. SIEGEL (hereinafter the "Unit Owner"), owns a unit in Tower No. 2

and he is, therefore, a member of The Towers of Quayside No. 2 Condominium Association, Inc.

In summary, the Homeowners' Association controls and operates the community-wide "common properties;" the separate condominium associations control and operate the "common elements" of their respective towers; and the Homeowners' Association ensures community-wide security, while also protecting the community's residents from the failure of the separate condominium associations to fulfill their duty to correct dangerous and/or unsightly conditions on the property under their jurisdiction.

This case first began its route to the Court when the Unit Owner petitioned the Division for a declaratory statement on the applicability of Section 718.301, Florida Statutes (1983), to the Homeowners' Association. (App. C). The Division examined whether the Homeowners' Association is a condominium "association" within the meaning of Section 718.103(2), Florida Statutes (1983). The Division issued its Declaratory Statement holding that the Homeowners' Association is not a condominium "association" within the meaning of such statute because it is not "the entity responsible for the operation of any condominium property." 2/ (App. F).

The Unit Owner then perfected an appeal from the Division's Declaratory Statement to the District Court of Appeal, Third District of Florida. (App. G). The Third District, in an opinion by the Honorable Wilkie D. Ferguson, Jr., reversed the decision

2/ "'Association' means the corporate entity responsible for the operation of a condominium." § 718.103(2), Fla. Stat. (1983).

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of the Division. The Third District held that the the Homeowners' Association is a condominium "association" because "the Homeowners' Association does, to a meaningful extent, operate condominium property." (App. G at 7).

The Homeowners' Association and the Division then invoked the Court's discretionary jurisdiction, asserting that the Third District's decision conflicts with the Court's decision in Raines, 413 So.2d 30. (App. J). Because of the concern and confusion assertedly created by the Third District's decision below, the Builders Association of South Florida, The Gardens of Kendall Property Owners Association, Inc. and the Florida Home Builders Association moved the Court for leave to file briefs as amici curiae.

On February 12, 1985, the Court accepted jurisdiction and granted the motions for leave to file briefs as amici curiae. Amici Curiae, Builders Association of South Florida and The Gardens of Kendall Property Owners Association, Inc. jointly submit this brief in support of the Homeowners' Association and the Division to assist the Court in the resolution of the legal and policy issues presented.

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STATEMENT OF THE ISSUES PRESENTED

Under any legal test or definition is the Homeowners' Association a condominium "association" given that it is created by a Declaration of Covenants, Restrictions, and Easements (not a Declaration of Condominium), and is given the power and duty to operate community-wide facilities (not a condominium's common elements), for a partially developed residential community?

Can and should a property owners' association be deemed a condominium association prior to completion of a proposed residential development, especially given that market forces may dictate non-condominium development of undeveloped tracts?

Can and should a Court tamper with the basic tenets of law by rewriting the contractual documents governing property ownership under circumstances where a grantor determined not to submit certain property to a condominium form of ownership?

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SUMMARY OF ARGUMENT

Under any legal test or definition heretofore established, i.e., by this Court's decision in Raines, the Fourth District's companion decision in Palm Beach Leisureville Community Association, Inc., the Third District's own opinion below, and the Florida Legislature's definition of "association," the Homeowners' Association is not a condominium "association."

The legal analysis used in Palm Beach Leisureville Community Association, Inc., reveals that the Homeowners' Association is not a condominium "association" because: (1) the Homeowners' Association's powers are derived from its Articles of Incorporation and Declaration of Covenants, Restrictions and Easements, not a Declaration of Condominium; (2) the Homeowners' Association performs community-wide functions and is not charged with the day-to-day operation of any condominium property; and (3) the Towers of Quayside community's developer did not intend to subject the common properties to the condominium form of ownership.

The Court's decision in Raines and the Florida Legislature's definition contained in Section 718.103(2), Florida Statutes (1983), also ineluctably leads to the conclusion that the Homeowners' Association is not a condominium "association." It is not "the corporate entity responsible for the operation of a condominium." Id. (emphasis added). If anything, it is the corporate entity responsible for the operation of a planned

community, which may or may not eventually consist only of condominiums operated by separate condominium associations.

The Homeowners' Association does not even fit within the framework of the Third District's own analysis of the issue: (1) the Homeowners' Association does not "operate condominium property generally" 3/ -- it generally operates community-wide facilities not submitted to condominium ownership; (2) the common properties are not condominium property since they were not submitted to condominium ownership and may never be so submitted; and (3) the Homeowners' Association exists to serve the entire Towers of Quayside community, only a portion of which is currently comprised of condominium unit owners.

The Third District's decision is also unsound both as a matter of law and policy. The Third District's focus was on only a portion of a planned community. Consequently, the Homeowners' Association was deemed to have a constituency of only condominium unit owners, when in fact market forces or other unanticipated circumstances might require future development under non-condominium forms of ownership.

Finally, the Third District's decision impermissibly tampers with the fundamental tenets of contract law. The developer of the Towers of Quayside community established the Homeowners' Association through the recording of a Declaration of Covenants, Restrictions and Easements. Therefore, the developer did not

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3/ Siegel, 453 So.2d at 416.

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choose to establish a condominium association, nor did he submit any of the property administered by the Homeowners' Association to the condominium form of ownership. The Third District, therefore, has rewritten the governing documents by creating a condominium association contrary to the developer's and homeowners' intent.

ARGUMENT

I. THE HOMEOWNERS' ASSOCIATION IS NOT A CONDOMINIUM ASSOCIATION WITHIN THE MEANING OF SECTION 718.103(2), FLORIDA STATUTES (1983), BECAUSE IT IS NOT "THE CORPORATE ENTITY RESPONSIBLE FOR THE OPERATION OF A CONDOMINIUM."

Detailed examination of the Condominium Act, §§ 718.101, et. seq., Fla. Stat. (1983) (hereinafter the "Act"), reveals that the Homeowners' Association is not a condominium association -- the letter and the intent of the Act make its statutory scheme inapplicable to a master property owners' association. The Court specifically so held in Raines, where it stated:

> The respondent association derives its powers from its articles of incorporation and from the declarations of restrictions governing both the condominium apartments and the single-family lots. Although the association has broad powers, it is not "the corporate entity responsible for the operation of a condominium." § 718.103(2). The individual condominium associations fit within this definition, but the respondent association does not.

413 So.2d at 32.

Section 718.102(2), Florida Statutes (1983), provides that one of the purposes of the Act is to establish procedures for the creation of condominiums. Section 718.104, Florida Statutes (1983), provides that a condominium is created by the recording of a declaration containing, inter alia, a statement submitting the property to condominium ownership.

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Contemporaneously with the recording of the declaration of condominium, a condominium association is created. See § 718.104(4)(j), Fla. Stat. (1983). The association is statutorily defined as "the corporate entity responsible for the operation of a condominium." § 718.103(2), Fla. Stat. (1983). "The association" is given certain powers and duties with regard to the operation of a condominium. § 718.111, Fla. Stat. (1983) (emphasis added). The Act contemplates that "[t]he association" may operate more than one condominium, § 718.111(1), Fla. Stat. (1983) (emphasis added), but the Act does not contemplate more than one association operating the same condominium.

The issue which is the subject of the instant proceeding and the statutory scheme of the Act was first addressed by a Florida Court in Palm Beach Leisureville Community Association, Inc. v. Raines, 398 So.2d 471 (Fla. 4th DCA 1981), approved 413 So.2d 30 (Fla. 1982). In holding that the Palm Beach Leisureville Community Association, Inc. was not a condominium association, the Fourth District noted that:

(1) the community association was not created pursuant to the Act, 398 So.2d at 473;

(2) no declaration of condominium was ever filed for the community association, id.;

(3) certain lots were not, nor were they intended, to be submitted to the condominium form of ownership, id., at 474; and

(4) the powers and duties under the Act were exercised

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by the separate condominium associations, not by the community association. Id.

Application of the statutory scheme of the Act and the Fourth District's decision leads to the conclusion that the Homeowners' Association is not a condominium association. The Homeowners' Association was not created by the recording of a Declaration of Condominum, or otherwise created as required by the Act. The Homeowners' Association was created through Articles of Incorporation and a Declaration of Covenants, Restrictions and Easements, neither of which fulfill the requirements of Section 718.104, Florida Statutes (1983).

Additionally, the Homeowners' Association is charged with the operation of the "common properties." Unlike the "common elements" which are properties with ownership rights appurtenant to each condominium unit, the "common properties" were not submitted to the condominium form of ownership and only the right to their use is appurtenant to the condominium units. The common properties are owned and managed by the Homeowners' Association and do not form a part of the common elements.

Furthermore, the Towers of Quayside community consists of two undeveloped tracts which when developed will be comprised of homeowners entitled to use the common properties, whether such owners are condominium unit owners, townhouse unit owners, or single family homeowners. In other words, these undeveloped tracts may or may not be "condominiumized," unlike the four towers already completed in the Towers of Quayside community.

Therefore, the common properties could not have been submitted to the condominium form of ownership because such properties may be used by non-condominium unit owners.

Finally, the powers and duties granted to associations under the Act are exercised by the separate condominium associations of the Towers of Quayside community. Each separate condominium tower is operated and managed by "the corporate entity responsible for [its] operation," 4/ i.e., The Towers of Quayside No. 1 Condominium Association, Inc., The Towers of Quayside No. 2 Condominium Association, Inc., The Towers of Quayside No. 3 Condominium Association, Inc., and The Towers of Quayside No. 4 Condominium Association, Inc., respectively. As the Palm Beach Leisureville Community Association, Inc., the Homeowners' Association in the instant case "is organized for the purpose of performing certain functions for the benefit of a planned community. It is not responsible for the operation of any of the . . . condominiums." Palm Beach Leisurville Community Association, Inc., 398 So.2d at 474.

As previously noted, the Court approved the Fourth District's decision in Palm Beach Leisureville Community Association, Inc., stating:

> The respondent association derives its powers from its articles of incorporation and from the declaration of restrictions governing both the condominium apartments and the single-family lots. Although the association has broad powers, it is not "the corporate entity responsible for the operation of a condominium." § 718.103(2). The

4/ § 718.103(2), Fla. Stat. (1983).

> individual condominium associations fit within this definition, but the respondent association does not.

Raines, 413 So.2d at 32.

Likewise, the Homeowners' Association in the instant case derives its powers from its Articles of Incorporation and Declaration of Covenants, Restrictions and Easements covering both the condominium towers and the heretofore undeveloped tracts. Although the Homeowners' Association has broad community-wide powers, it does not and is not responsible for the operation of any of the towers -- this is the responsibility of the individual condominium associations. As the condominium associations considered in Raines, the condominium associations in the instant case "fit" within the Section 718.103(2) definition, but the Homeowners' Association, as the Palm Beach Leisureville Community Association, does not.

What is most disconcerting about the Third District's decision is that the Homeowners' Association does not fit within the framework of that court's own opinion on the issue. Judge Ferguson posed three questions for examination to determine if the Homeowners' Association is a condominium "association":

> (1) does the Homeowners' Association operate condominium property generally; (2) are the common properties in fact condominium property; and (3) does the Homeowners' Association exist solely for the purpose of serving condominium unit owners.

Siegel, 453 So.2d at 416.

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Examination of the Homeowners' Association's functions and the ownership rights to the real property in the Towers of Quayside community leads to negative responses to the questions posed by the Third District. First, the Homeowners' Association does not "operate condominium property generally." Id. It operates the common properties which were not submitted to the condominium form of ownership in accordance with the Act. Its only functions with regard to the condominium property of the respective towers are "back-up" or "secondary" responsibilities necessary to ensure community-wide health, safety, and welfare. Thus, security is provided to protect the entire community, whether the parcels protected are condominium or non-condominium; architectural uniformity is necessary to protect the appearance and value of the entire community; and "back up" authority is granted to the Homeowners' Association to remedy deleterious conditions if, and only if, the respective condominium associations fail to fulfill their duties. The Homeowners' Association, therefore, is not unlike a state government who protects the interests of an entire state while appropriately leaving operation of municipalities to municipal governments. No one could logically argue that the exercise of limited and secondary powers by states over municipalities converts states into municipalities. Similarly, it cannot be logically argued that an omnibus Homeowners' Association is converted into a condominium "association" by exercising limited and secondary powers over some condominium property.

Secondly, the common properties operated by the Homeowners'

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Association are not condominium property. These properties were not submitted to condominium ownership in accordance with the Act. 5/

Finally, the Homeowners' Association does not "exist solely for the purpose of serving condominium unit owners." Siegel, 453 So.2d at 416. The Homeowners' Association exists to serve the entire Towers of Quayside community. The undeveloped portion of such community is not currently comprised of condominium unit owners. 6/

In conclusion, under the statutory definition of "association," i.e., "the corporate entity responsible for the operation of a condominium," 7/ the pronouncement of the Court and the Fourth District in the Raines companion cases, and even under the Third District's own opinion, the Homeowners' Association is not a condominium "association."

5/ Amici Curiae respectfully refer the Court to the argument on this issue contained in the Homeowners' Association's Brief on the Merits at 7-10.

6/ The Third District's focus on only the developed portion of the Towers of Quayside community, 453 So.2d at 416, n. 4, is discussed in detail in Argument II, infra.

7/ It is significant that the Florida Legislature has authorized the impaneling of a commission to recommend whether homeowners' associations should be regulated. See Homeowners' Association's Brief on the Merits at 15-6. If the Legislature intended that homeowners' associations be subject to the Act, why would it impanel such a commission?

II. THE THIRD DISTRICT DETERMINED THAT HOMEOWNERS' ASSOCIATION IS AN "ASSOCIATION" BY ERRONEOUSLY ASSESSING THE STRUCTURE OF AN ON-GOING DEVELOPMENT AT A PARTICULAR POINT IN TIME, CONTRARY TO THE ECONOMIC NECESSITY AND DEVELOPER'S RIGHT TO PROVIDE FOR DIFFERENT TYPES OF REAL PROPERTY OWNSHIP IN A PHASE DEVELOPMENT.

The Homeowners' Association argued before the Third District that the undeveloped tracts may be developed into residential housing other than condominiums. The Third District summarily rejected the argument:

> . . . the Homeowners' Association asserts that although the developer has proposed to build condominiums on the two remaining undeveloped sites, other non-condominium development would be possible. We reject this argument since we are dealing only with the present form of residential development which is limited to condominium units.

Siegel, 453 So.2d at 416, n. 4.

The Third District's conclusion that "we are dealing only with the present form of residential development which is limited to condominium units," in actuality, became the primary basis of its decision. The Third District distinguished the Court's decision in Raines, and placed reliance on the Division's declaratory statement in Number One Condominium Association-Palm Greens at Villa Del Rey, Inc. v. Division of Land Sales and Condominiums, filed 25, 1980, aff'd mem., Palm Greens Limited v. Division of Florida Land Sales and Condominiums, 402 So.2d 618 (Fla. 1st DCA 1981), specifically noting that Raines "pivoted on the fact that

the community association served both the single family homes and the condominium buildings," and the Palm Greens community was "comprised solely of condominiums." Siegel, 453 So.2d at 417 (emphasis in original).

From the discussion above, it is apparent the Third District's conclusion that the Towers of Quayside community is comprised only of condominiums is erroneous in two respects: (1) the community consists of four condominium towers and undeveloped tracts; and (2) the community cannot be deemed a condominium community at the present time since it is a phase development subject to future development of non-condominium units.

The Third District, by using a "freeze-frame" approach in determining whether a homeowners' association is a condominium association, has erroneously undermined the fundamental precepts of phase real estate development, as well as the very basic foundations of conveyancing. As will be explained below, the Third District's opinion vitiates the right of developers to alter the nature of such developments and further removes the economic necessity of flexibility in planning, constructing and marketing phase developments.

The Towers of Quayside community does not consist solely of condominium towers. As of January 1983, such community was comprised of two undeveloped tracts, a rental apartment tower, and three (3) condominium towers. Then, in February, 1983, the community's ownership structure was altered by the developer, presumably because market forces dictated that the rental apart-

ments be converted into condominium units. Thus, as of February, 1983, the community consisted of two (2) undeveloped tracts and four (4) condominium towers, and continues as of this date in such partially developed form.

Although the undeveloped tracts are earmarked for condominium development, market forces, such as those which acted to alter the nature of the community in February, 1983, may require rental, townhouse, duplex, and/or single family home development on the undeveloped tracts. The possibility that market forces may require a different type of development for presently undeveloped tracts is not merely speculation 8/ -- it has occurred with such frequency in real estate development that developers have formulated the "phase" development concept. The Towers of Quayside is an example of exactly that form of development.

The decision thus virtually eliminates the right of developers to pursue phase development since the logical import of the decision is that once a development is comprised only of condominiums, the underlying property becomes condominium property. Further development must, therefore, be condominium development to ensure an ownership interest and access on the identical basis to all present and prospective unit owners. Any other interpretation, e.g., that a homeowners' association can be a condominium association for the present time, and subsequently a homeowners'

8/ It is a well-known fact that the South Florida market contains a huge amount of unsold, high-priced condominium units of the type found at the Towers of Quayside. Accordingly, the developer in the instant case has not commenced proposed condominium construction on the undeveloped tracts.

association once non-condominium development is pursued, would make it virtually impossible to adequately determine ownership interests in the common property and to accurately determine the powers, rights and duties of such a "chameleon" association.

Furthermore, the Third District's decision would require transfer of control of an association under 718.301, Florida Statutes (as the Unit Owner sought to do in the instant case) long before a substantial part of the community is developed. As a result, unit owners, who may not have the desire or initiative to properly maintain the common facilities, would operate same improperly. Such failure to properly maintain and operate the common facilities would make it virtually impossible for the developer to sell remaining units since prospective purchasers will be concerned about the appearance and operation of the common facilities.

III. THE THIRD DISTRICT'S DECISION IMPERMISSIBLY REWRITES THE CONTRACTUAL DOCUMENTS GOVERNING THE OWNERSHIP RIGHTS IN THE COMMON PROPERTIES AND THE NATURE AND FUNCTIONS OF THE HOMEOWNERS' ASSOCIATION.

As noted in the Statement of the Case and of the Facts, supra, the Homeowners' Association was created, and the form of ownership of the common properties was established, through the recording of a Declaration of Covenants, Restrictions and Easements. Pursuant thereto, the Homeowners' Association is given the power and duty to own and operate the community-wide "common properties." Contemporaneously with the recording of the

Declaration of Covenants, Restrictions and Easements, separate condominium associations were created, and the form of ownership of the condominium units and their common elements was established, through the recording of Declarations of Condominium. Pursuant thereto, the condominium associations were given the power and duties to operate the common elements and condominium property under their respective jurisdictions.

The developer, and all purchasers of units in the Towers of Quayside community, thus agreed to both the form of real property ownership and the powers and duties of each of the associations as specified in the governing documents. The Homeowners' Association's jurisdiction; each condominium association's jurisdiction; and the non-condominium form of ownership of the common properties was forever contractually determined through the recording of the governing documents.

The Third District's decision alters these pre-existing contractual provisions. First, the common properties were not submitted to the condominium form of ownership, yet that form of ownership was judicially decreed. Secondly, the Homeowners' Association was not to be operated pursuant to the Act, yet the Homeowners' Association is now subject to the duties and responsibilities under the Act through ex contractu judicial pronouncement.

The Third District's decision, therefore, in addition to rewriting the law as established in the Court's decision in Raines, has rewritten the governing documents governing property

ownership and the duties and responsibilities of both the homeowners' and condominium associations. This departure from fundamental law and policy creates insurmountable problems for homeowners' associations as noted below.

Prior to the Third District's decision, it was quite clear that once a homeowners' association was formed it would remain a homeowners' association not subject to the requirements of the Act. Furthermore, the division of responsibility in communities was clear -- homeowners' associations would provide community-wide services, while individual condominium associations would operate and manage their respective condominiums. Finally, issues of real property ownership were clear in that each condominium unit owner had fee simple title to his unit and the appurtenant common elements, while homeowners' associations could own, manage and operate certain community-wide facilities which provide for appurtenant rights of use and enjoyment, but were not part of the appurtenant real property of any condominium units.

Amici Curiae submit that the following list of virtually unsolveable issues created by the Third District's decision are merely the "tip of the iceberg:"

(a) Since condominium associations are charged with the operation of only condominium property, does that mean that all property presently owned by homeowners' associations, including recreational facilities, is automatically converted into condominium property?

(b) If so, is this property now a common element or a

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limited common element or other type of property given that many governing declarations do not provide how such property should be characterized?

(c) How will property ownership be determined for a former homeowners' association's property where a declaration of condominium provides that common elements cannot be added to or expanded without the consent of the membership of the association? Will such property, as a matter of law, be the property of members who did not originally contract for nor want an ownership interest therein?

(d) Further, how will this property's ownership be accurately reflected in public records since most condominium unit owners' deeds reflect ownership of units and proportionate interests in common elements, but do not reflect any proportionate interests in property which was previously owned by a homeowners' association? Will all declarations of condominium have to be amended to reflect the submission of former homeowners' association's property to condominium ownership?

(e) How will unit owners be taxed, given that prior to the Third District's decision the homeowners' association was taxed as the owner of common properties while condominium unit owners were taxed only in accordance with their proportionate interests in condominium property?

(f) Are individual unit owners now personally liable for acts or omissions of a homeowners' association since prior to the Third District's decision the homeowners' association was

basically independent and had its separate property with which to respond in damages?

(g) Are unpaid subcontractors, laborers and materialmen who have already improved property previously owned by a homeowners' association now barred from filing liens on such property since it is now considered condominium property? and

(h) Are contracts previously entered into by a developer on behalf of a homeowners' association now voidable upon turnover of control of such association pursuant to Section 718.301, Florida Statutes (1983)?

Amici Curiae submit that they do not have clear answers to any of the questions posed above. More importantly, the current state of the law does not provide sufficient guidance to even begin addressing such questions.

Furthermore, many homeowners' associations must now comply with certain provisions under the Act, which will require substantial reorganization and restructuring of their methods and procedures of operation. For example, homeowners' associations must now obtain consent of a majority of owners for increasing assessments above 15%, § 718.112, Fla. Stat. (Supp. 1984); homeowners' associations are now liable for attorneys' fees in certain proceedings, § 718.303, Fla. Stat. (Supp. 1984); and homeowners associations must now pay fees to the Division, § 718.501(2)(a), Fla. Stat. (Supp. 1984).

In conclusion, the Siegel decision has virtually rewritten the documents and law governing real property ownership and the

operation of associations, creating confusion and subjecting interested parties to unanticipated and ex contractu obligations.

CONCLUSION

For all the foregoing reasons, the Court should reaffirm the law in this state as reflected in Raines, and reverse the decision of the Third District.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by mail on: Thomas A. Bell, Esquire and Karl M. Scheuerman, Esquire, Department of Business Regulation, Division of Florida Land Sales, Condominiums and Mobile Homes, 725 South Bronough Street, Tallahassee, Florida 32301; David W. Trench, Esquire and Martin A. Schwartz, Esquire, Rubin Baum Levin Constant Friedman & Bilzin, 1201 Brickell Avenue, Miami, Florida 33131; and Richard E. Gentry, Esquire, Florida Home Builders Association, P.O. Box 1259, Tallahassee, Florida 32302; and by hand on Mark B. Schorr, Esquire, Becker, Poliakoff & Streitfeld, P.A., 6520 No. Andrews Avenue, P.O. Box 9057, Fort Lauderdale, Florida 33310-9057, this 8th day of March, 1985.

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